FILE COPY

DEC 22 1947

IN THE SUPREME COURT OF THE UNITED STATES
JANUARY TERM 1948

No. 415

EARL J. TOOMER, JOSEPH A. CESARONI, JOSEPH DeGRACIA, S. W. DAVIES, S. D. COLLINS, and THE ATLANTIC SEAFOOD PRODUCERS, INC., a Corporation

Appellants

versus

J. M. WITSELL, EDWARD E. BURROUGHS, E. L. SWEAT, C. L. YOUNG, and J. A. WILCOX, composing the South Carolina State Board of Fisheries, a body corporate, and ALONZO B. SEABROOK, the Chief Inspector thereof.

Appellees

Appeal from the District Court of the United States for The Eastern District of South Carolina

# BRIEF OF APPELLANTS

AARON KRAVITCH
ROBERT E. FALLIGANT
PHYLLIS KRAVITCH
JOHN J. BOUHAN

Counsel for Appellants

# INDEX

## Subject Index


| | Page |
|---|---|
| Motion to dismiss or affirm | 1 |
| Brief in support of motion to dismiss or affirm | 3 |


## Table of Cases Cited


| | |
|---|---|
| *American Federation of Labor* v. *Watson*, 327 U. S. 583 | 6 |
| *Bayside Fish Flour Co.* v. *Gentry*, 297 U. S. 422 | 5 |
| *Beal* v. *Missouri-Pacific R. Corp.*, 312 U. S. 45 | 6 |
| *Coe* v. *Errol*, 116 U. S. 517 | 5 |
| *Douglas* v. *Jeanette*, 319 U. S. 163 | 6 |
| *Geer* v. *Connecticut*, 161 U. S. 519 | 5 |
| *Haavik* v. *Alaska Packers Assoc.*, 263 U. S. 510 | 5 |
| *Hope Natural Gas Co.* v. *Hall*, 274 U. S. 284 | 5 |
| *Louisiana* v. *Mississippi*, 202 U. S. 1, 52 | 5 |
| *LaCoste* v. *Department of Conservation*, 263 U. S. 545 | 5 |
| *Manchester* v. *Massachusetts*, 139 U. S. 240 | 5 |
| *McCready* v. *Virginia*, 94 U. S. 391, 394 | 4 |
| *Patsone* v. *Pennsylvania*, 232 U. S. 138 | 5 |
| *Rescue Army* v. *Municipal Court of City of Los Angeles*, — U. S. —, 91 L. Ed. 1221, 1232 | 7 |
| *Skiriotes* v. *Florida*, 313 U. S. 69 | 5 |
| *Spielman Motor Sales Co.* v. *Dodge*, 295 U. S. 89 | 6 |
| *The Abby Dodge*, 223 U. S. 166 | 5 |
| *United States* v. *California*, — U. S. —, 91 L. Ed. 1414 | 1, 2, 5 |
| *Ward* v. *Race Horse*, 163 U. S. 504 | 5 |
| *Wilson* v. *Shaw*, 204 U. S. 24 | 7 |


## Statutes Cited


| | |
|---|---|
| Judicial Code, Sec. 267, 28 U. S. C. Sec. 384 | 7 |
| U. S. Constitution, Art. I, Sects. 8 and 10 | 4, 5 |
| U. S. Constitution, Art. IV, Sec. 2 | 5 |
| U. S. Constitution, 14th Amendment | 5 |

# SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1947

## No. 415

EARL J. TOOMER, JOSEPH A. CESARONI, JOSEPH DeGRACIA, S. W. DAVIES, S. D. COLLINS, AND THE ATLANTIC SEAFOOD PRODUCERS, INC., A CORPORATION,
*Appellants,*

*vs.*

J. M. WITSELL, EDWARD M. BURROUGHS, E. L. SWEAT, C. L. YOUNG AND J. A. WILCOX, COMPOSING THE SOUTH CAROLINA STATE BOARD OF FISHERIES, A BODY CORPORATE, AND ALONZO B. SEABROOK, THE CHIEF INSPECTOR THEREOF,
*Appellees.*

## MOTION TO DISMISS OR AFFIRM

Pursuant to the provisions of Rules 7 and 12 of the Supreme Court of the United States, the Appellees move the Court to dismiss the appeal or in the alternative to affirm the judgment of the Court below upon the grounds:

I. That the questions on which the decision of the cause depends are so unsubstantial as not to need further argument, because:

(a) The State of South Carolina has jurisdiction to regulate fishing within its coastal waters within the three mile maritime belt;

(b) No constitutional rights of the appellants are infringed by the State's refusal to allow them to fish within its waters upon the same terms afforded to residents of the State;

(c) The State is not imposing a tax on imports, and the enforcement of its fisheries laws does not constitute an unconstitutional burdening of interstate commerce;

(d) The appellants have failed to show that the statutes attacked are other than proper conservation measures.

II. That appellants have no proper standing in a Federal Court of Equity to justify the relief sought, because:

(a) They have shown no clear and imminent irreparable damage sufficient to justify a Federal Court of Equity enjoining the enforcement of a State criminal law;

(b) Their conduct in the past demonstrates a flagrant disregard of the South Carolina Fisheries law, shows that no irreparable damage is threatened them, and calls for an application of the clean hands maxim;

(c) An adequate remedy at law is available to appellants in the courts of South Carolina, which courts should be permitted to pass initially upon the questions raised in the present cause.

Respectfully submitted,

(S.) JOHN M. DANIEL,
*Attorney General;*
(S.) T. C. CALLISON,
*Assistant Attorney General;*
(S.) J. MONROE FULMER,
*Assistant Attorney General;*
*Attorneys for Appellees.*

(S.) ROBINSON & ROBINSON,
*Of Counsel.*

October 17, 1947.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947.

---

# No. 415

---

EARL J. TOOMER, JOSEPH A. CESARONI, JOSEPH DeGRACIA, S. W. DAVIES, S. D. COLLINS, AND THE ATLANTIC SEAFOOD PRODUCERS, INC., A CORPORATION,
*Appellants,*

*vs.*

J. M. WITSELL, EDWARD M. BURROUGHS, E. L. SWEAT, C. L. YOUNG AND J. A. WILCOX, COMPOSING THE SOUTH CAROLINA STATE BOARD OF FISHERIES, A BODY CORPORATE, AND ALONZO B. SEABROOK, THE CHIEF INSPECTOR THEREOF,
*Appellees.*

---

## BRIEF IN SUPPORT OF MOTION TO DISMISS OR AFFIRM

---

### Statement

The appellants, Georgia commercial fishermen, sought an interlocutory and permanent injunction before a three-Judge District Court, convened pursuant to Section 266 of the Judicial Code, against the enforcement by the defendants, South Carolina Conservation Officers, of certain "fisheries laws" of South Carolina. Appellants' contention, undoubtedly inspired by the opinion of this Court in *United*

*States* v. *California*, — U. S. —, 91 L. Ed. 1414, was that the State of South Carolina is without power to regulate fishing within the marginal three mile belt beyond low-water mark so as to establish different conditions for the fishing of those waters by residents and nonresidents, as in violation of the privileges and immunities clause of the Constitution and the equal protection clause of the 14th Amendment. It was further contended that the statutes impose a tax on imports and a burden upon interstate commerce in violation of Sections 8 and 10 of Article I. of the Federal Constitution.

At the hearing before the three-Judge Court a final decree was issued on 12 September 1947 dismissing the suit and denying the application for an injunction. The Court held that the plaintiffs had shown irreparable damage sufficient to justify a Federal Court of Equity in assuming jurisdiction, but on the merits held the South Carolina statutes valid.

It is appellees' position that appellants' constitutional questions are so unsubstantial as not to require argument; that they have shown no irreparable damage justifying the enjoyment of a state criminal law; that they have come into court without clean hands; and that they have an adequate remedy at law in the South Carolina Courts. Authorities supporting these latter points as well as demonstrating the unsubstantial nature of appellants' constitutional contentions are cited below.

## I

### Appellants' Constitutional Questions Are Without Substance, Having Been Settled by Decisions of This Court

A. South Carolina has jurisdiction to regulate the fisheries within its territorial limits, including the three mile maritime belt. *McCready* v. *Virginia*, 94 U. S. 391, 394;

*Manchester* v. *Massachusetts*, 139 U. S. 240; *Louisiana* v. *Mississippi*, 202 U. S. 1, 52; *The Abby Dodge*, 223 U. S. 166; *Skiriotes* v. *Florida*, 313 U. S. 69.

That doctrine is unaffected by the decision of this Court in *United States* v. *California*, — U. S. —, 91 L. Ed. 1414, where the question was not as to the State's exercise of police power over the marginal sea, but as to the conflicting proprietary interests of the State and the National Government in the oil deposits below the bed of the ocean.

B. The State having the absolute right to control and conserve its wild life for the benefit of its own citizens, neither the privileges and immunities clause of Article IV of the Constitution nor the equal protection clause of the 14th Amendment requires the State to accord equality of treatment in regulating its fisheries to non-residents and residents. *Geer* v. *Connecticut*, 161 U. S. 519; *Ward* v. *Race Horse*, 163 U. S. 504; *Patsone* v. *Pennsylvania*, 232 U. S. 138; *Haavik* v. *Alaska Packers Association*, 263 U. S. 510; *LaCoste* v. *Department of Conservation*, 263 U. S. 545.

C. The South Carolina fisheries laws do not impose a tax on imports, the only tax being upon those fish or shrimp taken within the three mile belt; nor do they burden interstate commerce in violation of Sections 8 and 10 of Article I. *Geer* v. *Connecticut*, *supra*; *Bayside Fish Flour Co.* v. *Gentry*, 297 U. S. 422; *Hope Natural Gas Co.* v. *Hall*, 274 U. S. 284; *Coe* v. *Errol*, 116 U. S. 517.

D. Plaintiffs make no showing that the South Carolina statutes attached are other than what they appear on their face to be—conservation measures for the protection of the State's supply of fish and shrimp for the State's own citizens. The much higher cost of enforcing the fisheries laws, particular their inspection features, against nonresident fishermen as compared to resident fishermen, is an obvious basis for the higher license fees charged the nonresidents.

Then too, the State is properly furthering its conservation purposes when it requires of non-resident fishermen "'a license fee so high as to limit their number and to reimburse the people of the State in some measure for the loss sustained by them from the fishing of those who are licensed." (*Toomer, et al.* v. *Witsell, et al.*, — F. Supp. —.)

II

**Plaintiffs Have No Standing in a Federal Court of Equity**

A. Appellants show no irreparable damage arising from the State's enforcement of its fishery laws sufficient to justify a Federal Court of Equity in enjoining the enforcement of a State criminal statute. The only threatened result is a multiplicity of criminal proceedings and an impairment of their private businesses which is not sufficient. *American Federation of Labor* v. *Watson*, 327 U. S. 582; *Spielman Motor Sales Co.* v. *Dodge*, 295 U. S. 89; *Beal* v. *Missouri-Pacific R. Corp.*, 312 U. S. 45; *Douglas* v. *Jeannette*, 319 U. S. 163.

B. It was admitted at the hearing that all of the individual appellants have violated the laws which they attack by fishing without licenses in South Carolina waters during the 1947 fishing season; that all have criminal records in South Carolina for previous violations of other portions of the fisheries laws such as out-of-season fishing. The corporate appellant is not a fisherman. Persons manifesting such a wilful disregard of the South Carolina fisheries laws should be barred from a standing in a Court of Equity under the clean hands maxim and also because their flouting of the law shows that they will not be irreparably damaged by its enforcement.

C. Appellants' petition shows that there are criminal proceedings now pending in the South Carolina courts

against them in which all of the questions raised in the present cause may be determined. Therefore, there is an adequate remedy at law. Judicial Code, Sec. 267; 2 U. S. C. Sec. 384; *Wilson* v. *Shaw*, 204 U. S. 24.

This Court will not decide constitutional questions unless their determination is strictly necessary. *Rescue Army* v. *Municipal Court of the City of Los Angeles*, — U. S. —, 91 L. Ed. 1221, 1232.

## Conclusion

It is submitted that the constitutional questions raised by appellants are unsubstantial and that they have no standing in a Federal Court of Equity to enjoin the enforcement of these State criminal laws.

Respectfully submitted,

JOHN M. DANIEL,
*Attorney General;*
T. C. CALLISON,
*Assistant Attorney General;*
J. MONROE FULMER,
*Assistant Attorney General;*
*Attorneys for Appellees.*

ROBINSON & ROBINSON,
*Of Counsel.*